

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 121/2008

**BEFORE: THE HON. MR JUSTICE HARRISON JA
 THE HON. MISS JUSTICE PHILLIPS JA
 THE HON. MRS JUSTICE M^cINTOSH JA (Ag)**

RADCLIFFE SMITH v R

Robert Fletcher and Miss Tameka Harris for the applicant

Miss Dahlia Findlay for the Crown

23 February 2010

ORAL JUDGMENT

M^cINTOSH, JA (Ag)

[1] The appellant, Radcliffe Smith, was convicted in the High Court Division of the Gun Court, on 5 March 2008, for the offences of illegal possession of firearm and wounding with intent. He was sentenced on 10 October 2008 to serve terms of ten years and eighteen years imprisonment, respectively and the sentences were ordered to run concurrently. He applied for leave to appeal his convictions and sentences and the single judge of appeal who first considered his application refused him leave to appeal his convictions, but granted him leave in relation to sentence. He did not renew his application for leave to

appeal his conviction before this court, and did not pursue his appeal against the sentence of 10 years imprisonment, but pursued his appeal against the sentence of 18 years imprisonment for shooting with intent.

[2] The single ground of appeal is that the sentence is manifestly excessive. His attorney-at-law, Mr. Robert Fletcher, argued that the sentencing was swift and unrevealing as to the specific matters that the learned judge took into account in arriving at the sentence imposed, bearing in mind that the appellant had no previous convictions and was gainfully employed. Counsel was of the view that, in those circumstances, a sentence of twelve years imprisonment was more appropriate.

[3] Very briefly, the facts are that, on 21 April 2007, at about 6:00 a.m., the complainant Kevin Rowe was walking to his home, on his way from a nearby bank where he had made a deposit for his boss, when he was accosted by the appellant, Radcliffe Smith and another man. The appellant demanded money from him asking "weh di money deh". When no money was forthcoming, the appellant pulled a firearm from his waist and shot Mr. Rowe four times. The first shot threw him (Mr. Rowe) to the ground and then the appellant continued to shoot him, while he was on the ground. Mr. Rowe received injuries to his chest, his belly, his shoulder and his spine, and he was hospitalized for six weeks. He is now unable to walk.

[4] In imposing sentence, the judge had this to say:

"I look at the circumstances of the case, and I looked at the fact that you stood over the man, because he was known, you stood over him and you shot him, because clearly it is somebody that is known to each other and that would have to impact. He was shot in that manner several times. He was not intended to remain on this earth, that this is a serious matter, is beyond question."

[5] The judge clearly regarded this as akin to attempted murder which is not unjustified. It surely is no fault of the appellant that the claimant survived and was able to speak of the incident. In those circumstances, how much weight was to be given to his previous clean record? This was a daring shooting in broad daylight, with devastating consequences and the judge sought to reflect the feelings of society as she saw it. This conviction was a very serious blemish on his hitherto clean record and warranted a heavy sentence. In our view, the sentence of eighteen years befitted the offence and we see no reason to interfere with it.

[6] Accordingly, the appeal against sentence is dismissed. His convictions and sentences are affirmed and the sentences are to commence on 10 January 2009.